

Preamble / Purpose and Intent

Jefferson County is conducting this review and update of its critical areas ordinance as required by the provisions of the Washington Growth Management Act (GMA).

Amendments to Jefferson County's Development Code, (UDC) require an explanation of how the proposed amendment meets or conflicts with the criteria of three Growth Management Indicators. The third of these asks that we determine whether the proposed amendment reflects the current widely held values of Jefferson County's citizens.

In developing the Critical Areas Ordinance (CAO) update draft released May 17, 2006 for public review prior to consideration for adoption by the Board of County Commissioners (BoCC), the Department of Community Development (DCD) stated that consideration of public input was a key factor in evaluating their proposal. At the Planning Commission public hearing of June 21, 2006, attended by about 200 people, the response to the draft was overwhelmingly negative. Only one of the nearly sixty people who testified spoke in its favor. A substantial body of written comments submitted to DCD also expressed deep concern with the draft. Heavy attendance at BoCC meetings also demonstrated a need for substantial revision before the CAO update would be accepted by county residents.

The main concern expressed by Jefferson County citizens circulated around the lack of advance notice and the lack of involvement on the part of those who would be most directly affected by the updated provisions included in the draft. The CAO update draft failed to provide a demonstration of harm sufficient to warrant the extent of the restrictions being proposed. Many resented the regulatory assumption that the county's landowners would not be good stewards of the ecosystem elements on their properties.

In response to this outpouring of concern, the Planning Commission voted unanimously, with the support of the Board of County Commissioners, to form a CAO Review Committee comprised of both Planning Commissioners and a citizens' advisory group representative of the community. The work of this committee over the course of nine months of weekly meetings is an extension of the will of public process and participation requirements insisted upon by Jefferson County citizens and required by the Growth Management Act (GMA).

During extensive deliberations involving committee members possessing highly professional knowledge of the issues at hand and consideration of thousands of pages of relevant material, the committee has reached conclusions pointing to the new draft ordinance update that places accountable, performance based protections of critical areas in the hands of Jefferson County's citizens in preference to the more general and highly prescriptive provisions recommended by the Department of Ecology that may not relate well to the local circumstances of Jefferson County.

The alternatives developed for use by the county's citizens are supported by locally developed science and a body of research pertinent to the highly rural character of Jefferson County. Such use of alternatives is encouraged by the GMA and has been supported by the Western Washington Growth Management Hearings Board, which is the hearings board with jurisdiction over Jefferson County's CAO.

As a whole, Jefferson County's citizens have a strong ethic of environmental stewardship and a willingness to learn more about how to better protect the ecosystem elements they are individually and collectively responsible for. The Jefferson County Conservation District, one of the foremost conservation districts in Washington, leads the way in putting conservation on the ground through highly effective voluntary programs. There needs to be a greater confidence in and reliance upon the county's citizens for their activities in applying their stewardship ethic to the county's landscapes through an active partnership between government and its citizens.

The purpose and intent of the ordinance is to protect the functions and values of the county's ecosystems while also protecting the civil rights of the citizens who are affected by its provisions. The ordinance provides critical areas protection through the provision of a broad range of alternatives that citizens can choose from in protecting the functions and values of ecosystem elements present on their properties. The basic premise of this approach is a firm belief that citizens can and ought to be trusted to make informed choices for the protection of their environment. A purely prescriptive alternative is provided for those who either opt not to make use of the alternative opportunities, or who are, for one reason or another, unable to do so. A monitoring program serves to ensure that ecosystem protections are working.

There should be flexibility in the administration of this ordinance and meaningful provisions to redress and ameliorate significant hardships to property owners without disproportionate costs to them.

The ordinance should be clear, concise, and written in "plain English" so that citizens will know what is expected of them and how they can meet its requirements, and to provide clear direction to the Department of Community Development staff in applying its provisions. Jargon and unexplained references should be avoided, and supplementary information should be readily available to citizens seeking to meet their personal goals while protecting the ecosystems they live in.

The ordinance's mandatory provisions should be written in regulatory language only, avoiding the use of phrasing that involves encouragement, equivocation, vagueness, the appearance of coercion, or consists of educational rhetoric or other wording inappropriate to regulatory enactment.

Regulations need to be targeted toward solving identified problems. There needs to be a clear legislative statement of each problem to be solved, accompanied by a statement

speaking to the expected effectiveness of the regulatory solution. Monitoring and evaluation requirements need to be plainly defined, and there needs to be provision for adaptive management for those occasions when monitoring identifies a problem. There also needs to be a “sunset clause” for provisions that fail to achieve their intended results or are later demonstrated to be unnecessary. The proposed ordinance includes provisions for a regulatory response where voluntary compliance cannot be achieved.

There is a broad spectrum of GMA goals that need to be fully balanced with one another, and these need to be further balanced with the fundamental constitutional and civil rights of Jefferson County’s citizens. These all need to be taken into account, along with the principle of avoiding harm to the rights and privileges of Jefferson County’s citizens while protecting its ecosystems.

The provisions and restrictions of the ordinance must be viewed as legitimate in order to gain the willing compliance of those citizens affected by it. When people do not consider land use regulations to be necessary and fair, the likely result will be increasing levels of defiance that result in requirements being ignored to the detriment of water and habitat quality.

The concept of a shared onus, where citizens and their government share responsibility for managing natural resources and critical areas, is key to maintaining and improving the quality of Jefferson County’s ecosystems. In practice, this means that government has a responsibility to clearly document why a restriction should be imposed on the use of a portion of a citizen’s property. In response, citizens have a responsibility to manage their property in ways that avoid harm to ecosystem functions. With this in mind, the ordinance needs to make a broad range of ecosystem protection alternatives available for its citizens to choose from in managing critical areas on their properties.

The concept of a shared onus extends to all citizens sharing the costs of a benefit to the common good. This means that the economic burden of providing benefits to the common good by protecting ecosystems should not be shouldered solely by those citizens who happen to own the land where the county determines those protections are needed. Costs can be reduced by minimizing the number and complexity of special reports and consultations required of landowners, and unavoidable costs should be shared across the community as a whole. For instance, government should help landowners develop habitat management plans where there is a demonstrable need for such plans.

The ordinance’s provisions should be equally applied to landowners involved in substantially the same activities and possessing substantially the same type of landscapes. In cases where this is not possible, there should be a clear statement of why one class or type of landowner is treated differently or advantaged over another.

Protection of critical areas and growth management are separate issues, and blurring the line between the two would likely result in harm to ecosystem elements and be

detrimental to habitat and water quality. The provisions of this ordinance need to be directed toward ecosystem protection in ways that respect this fundamental need to respect this distinction.

Each critical area site has unique characteristics, and each landowner has unique goals and plans. The combination of these elements is best recognized through the development of site-specific management plans that protect the functions and values of the ecosystems while meeting the landowner's needs. The resources necessary to develop these plans are not available to every landowner, so there is a need for minimum requirements, coupled with the practice of monitoring and adaptive management as a starting point. Beyond this, the ordinance needs to make available a broad range of critical areas management options, with the provision that landowners can select from among them to develop a plan that is protective of the ecosystem's functions and values while allowing maximum enjoyment of the property by the owner.

The Western Washington Growth Management Hearings Board has clearly stated that the GMA is intended to sustain existing conditions, and that it does not require enhancement of already degraded environments. This does not mean that enhancement is not a worthy goal. However, if a landowner opts to make improvements, there should be no penalty for doing so. In practice, this means that the ordinance should hold harmless anyone who enhances a critical area. For instance, if a property owner improves a wetland to the point where it qualifies for typing as a higher class than it used to be, the landowner should not be penalized for doing good by having buffer width requirements increased. Holding citizens harmless for enhancing ecosystems will remove a major disincentive for making such improvements.

In the recognition that the Department of Ecology's buffer width requirements represent a "moderate risk" approach, and in the absence of demonstrated harm, the ordinance should allow the use of scientifically supportable minimum buffer widths protective of water quality and hydrologic functions of wetlands, streams and lakes whenever possible. The protectiveness of these minimum standards should be documented through the use of monitoring. When monitoring shows environmental harm, the involved landowner(s) should be required to adapt their management practices, including a possible increase of buffer widths, to correct the problem.

Similar minimum buffer widths have not been established for wildlife. Rural Jefferson County is characterized by zoning that allows primarily low density development, generally limiting density to one building site per five acres at its most dense. Only about 5% of the county's landscape is available for agricultural, commercial, and residential development, and there is no general statutory requirement for private landowners to manage their property for the benefit of wildlife not listed as threatened or endangered pursuant to a formal listing process. Aside from the establishment of small wildlife buffers, based on the habitat scores defined in the Washington State Wetland Rating System (WDOE, 2004) and riparian buffers required under the Forest Practices

Act (RCW 76.09), further enhancement of wildlife habitat on privately owned property is best accomplished through a voluntary program supported by education and incentives.

Agriculture is an important and historically significant activity in Jefferson County, and one of the core constituents of its rural character. However, as a result of geologically recent glaciations, most of its upland soils are immature and not well suited to agricultural use. This means that most of the county's successful farming areas are located in lowland areas, where the majority of the organic soils are located. The best use of these prime soils is for continued agricultural production. Critical areas associated with agricultural lands should be protected through the use of NRCS best management practices (BMPs), developed under NRCS best available science (BAS), an approach that has been upheld by the Western Washington Growth Management Hearings Board.

Food production is a basic human activity that enhances the lives of many rural residents of the county, and the county's citizens are determined to protect this agricultural history and to provide future generations with the opportunity to grow local produce. Encouraging the retention of the current agricultural base, and building upon it to further develop local production to meet the desire of many to meet personal and community sustainability goals should be supported by the ordinance's provisions.

The passage of SSB 5248 during the 2007 session of the Washington State Legislature provides a three-year exemption from this ordinance update. The legislation states that:

“For the period beginning May 1, 2007 and concluding July 1, 2010, counties and cities may not amend or adopt critical area ordinances under RCW 36.70A.060(2) as they specifically apply to agricultural activities.”

However, the legislation continues with the statement that counties

“. . . should implement voluntary programs to enhance public resources and the viability of agriculture.”

The bill also includes the definition,

“For purposes of this section and section 3 of this act, “agricultural activities” means agricultural uses and practices currently existing **or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 . . .**” (emphasis added).

The provides encouragement for the continuation of the county's current agricultural activities, as well as the development of new agricultural operations that will support a sustainable future for agriculture in the county.

Farming is an evolving activity, requiring significant investments in land, machinery, and tremendous levels of personal commitment. As market and climate conditions change, all types of agricultural operations need maximum flexibility in the ability to change crops and livestock species to remain viable, as well as to qualify for financing to remain in business and develop new production capabilities. Therefore, farmers need the assurance that they can change from farmland to forestry, or change farming intensities without having to obtain new permits from local agencies. This flexibility is a right that farmers should be able to exercise (right to farm) and should not be interfered with in the absence of empirical evidence of harm.

The adoption of this ordinance should be accompanied by a clear statement of the Board of County Commissioners' analysis and consideration of the impacts of its provisions on affected property owners. The statement should include their reasoning as to why those provisions constitute the least onerous alternative for reaching the ordinance's stated objectives and/or for correcting documented harms to ecosystem functions and values. The statement should further include an analysis of the direct costs of the ordinance, by whom these costs are borne, and a methodology for monitoring expenditures to determine whether those costs are experienced or exceeded in practice.

The ordinance needs to provide a specific mechanism by which any Jefferson County citizen can petition for modification and/or rescission of any provision of the ordinance which can be demonstrated to be ineffective, inappropriate, or inapplicable to their specific factual circumstances. This mechanism will allow for expeditious processing and administrative decision, subject to appeal to the Hearing Examiner in the manner currently provided in the Jefferson County Unified Development Code.

Jefferson County's citizens should not have to pay for the privilege or be penalized if they demonstrate that provisions of the ordinance cause them undue harm or violate their civil rights.

There needs to be clear indication as to which provisions are mandatory (i.e. required by law) and which are discretionary (i.e. a voluntary choice by Jefferson County to exceed the minimum requirements of state or federal law). In cases where the County opts to include a discretionary provision, it should detail its reasoning for doing so. It should state what problem the provision is expected to solve and what information the County will collect to determine the provision's effectiveness.

The provisions of this ordinance should not duplicate regulatory program provisions already in effect through any other federal or state agencies.

The preservation of Jefferson County's rural character is a widely and strongly held community value. The CAO Review Committee, in its early discussions, rejected the concept of the "gentrification" of the county, prioritizing the importance of preserving

rural character in designing a draft CAO. The Growth Management Act defines rural character as fostering “traditional rural lifestyles.”

One key inherent traditional rural value is a commitment to engaged stewardship ensuring the continued prosperity of the land upon which we depend. Performance based protections of wetlands and streams, based on landowner participation, are more likely to be effective in achieving actual on-the-ground conservation than prescriptive, fixed width buffers based on “moderate” risk management.

The regulatory approach and fundamental conservation principles recommended by the Committee are not intended to compromise critical areas protections. They are a strong recognition of the demonstrated value of voluntary approaches to natural resource conservation and stewardship here and elsewhere in our nation. The Committee developed this approach in the belief that these principles are critical to protecting our ecosystems for our children, our children’s children, and wildlife far into the future.